IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO.45 OF 2006

IN

SUIT NO.79 OF 2005
(Petition no.70 of 2004)

Vijay @ Vijaykumar Dhanesh Pathak and others. ...Plaintiffs

vs.

Shri.Jayesh Dhanesh Pathak. ...Defendant/Caveator

Mr.K.H.Mody i/b. Panchamatia & Co.,for Plaintiffs.

None for Defendant/Caveator.

CORAM: D.K.DESHMUKH,J.

DATED: 17th August, 2006.

P.C.:-

1. This is a chamber summons taken out by the plaintiffs who have filed this petition/suit for obtaining probate of the Will left behind by one Dhanesh Keshavlal Pathak who died on 4.2.2001. One

of the sons of the deceased by name Jayesh has filed the Caveat. He has also filed affidavit in support of the Caveat. In the affidavit filed in support of the Caveat in paragraph 15 Mr.Jayesh – the Caveator has stated that his brother who is the present petitioner/plaintiff no.1 has paid him Rs.5,00,000/- by cheque but that amount was paid as initial payment and he was told by the petitioner/plaintiff no.1 that the father has died without making any Will and that therefore, the Caveator has equal share in the property. He has also stated that the petitioner/plaintiff no.1 had taken his signature on some blank papers. In the affidavit filed in support of the petition, the petitioners/plaintiffs have alleged that the Caveator cannot approbate and reprobate and sustain the Caveat proceedings. The petitioner states that the said Caveator has signed a declaration on oath and he has signed that on 22.6.2001 before the Notary wherein he has declared that his father has left behind him a Will dated 22.4.1993 whereby the petitioner/plaintiff no.1 has been appointed as executor and as per that Will an amount of Rs.5 lakhs was to be paid by the executor

to the Caveator, which the Executor has paid to the Caveator by a cheque.

2. The learned Counsel appearing for petitioners states that the Caveator has been served with this chamber summons on 7.7.2006. He undertakers to file affidavit of service. The Caveator has not filed any reply to the affidavit filed in support of the chamber summons. The matter was called in the morning, none appeared for Caveator. Therefore, it was kept back. Again it was called in the afternoon, again none appeared for caveator. In the absence of any reply filed by the Caveator to the affidavit filed in support of the chamber summons, the allegations made in the affidavit filed in support of the chamber summons will have to be accepted at face value. Considering also the averments made in the affidavit filed in support of the Caveat, according to those averments the Caveator has signed some blank papers, however he does not say that he had signed on blank stamp paper. The declaration on which the petitioners rely is on the stamp paper and the declaration is signed,

according to that document, by the Caveator in presence of a notary public. Taking overall view of the matter therefore, specially because the allegations made in the affidavit filed in support of the chamber summons are uncontroverted, they are to be accepted at face value, and therefore, the chamber summons is granted in terms of prayer clause (a) and (b). The chamber summons is disposed of.